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FILED

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Division of Consumer Affairs

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STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS

Docket No.: 05-008

PETER C. HARVEY, Attorney General of
the State of New Jersey,

Petitioner,

v.

MARK LOUIS CARDELUCCI,
individually and d/b/a MARK LOUIS
CARDELUCCI,

Respondent,

Administrative Action

COMPLAINT

PETER C. HARVEY, Attorney General of the State of New Jersey, with offices located at
124 Halsey Street, Fifth Floor, Newark, New Jersey, by way of Complaint states:

PARTIES AND JURISDICTION

1. Pursuant to N.J.S.A. 52:17A-4, the Attorney General of the State of New Jersey
("Attorney General") is charged with the responsibility of enforcing the laws of the State of New
Jersey (the "State"), including the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (the

“CFA”), and the regulations promulgated thereunder, N.J.A.C. 13:45A-16.1 et seq. (the “Regulations”).

2. By this action, the Attorney General (“Petitioner”) seeks injunctive and other relief for violations of the CFA and relevant Regulations. Petitioner brings this action pursuant to the authority under the CFA, specifically N.J.S.A. 56:8-3.1, N.J.S.A. 56:8-8, N.J.S.A. 56:8-11, N.J.S.A. 56:8-13 and N.J.S.A. 56:8-19.

3. Upon information and belief, Mark Louis Cardelucci, (“Cardelucci”) is the owner, manager, member, agent and/or employee of Mark Louis Cardelucci, a home improvement contracting business. Upon information and belief, Cardelucci’s last known and/or current home address is 104 West Federal Street, Burlington, New Jersey 08016.

4. Upon information and belief, Mark Louis Cardelucci is not incorporated in the State or elsewhere. Upon information and belief, at all relevant times, Mark Louis Cardelucci has maintained a principal place of business at 104 West Federal Street, Burlington, New Jersey 08016.

5. Cardelucci and Mark Louis Cardelucci are collectively referred to as “Respondent”.

GENERAL ALLEGATIONS COMMON TO ALL COUNTS:

6. Upon information and belief, at least since March 9, 2004, Respondent has been engaged in the business of performing home improvements in the State including, but not limited to, the construction of porches, exterior ramps and bathrooms.

7. At all relevant times, Respondent was not licensed as a electrician in the State.

8. At all relevant times, Respondent was not licensed as a plumber in the State.

9. Upon information and belief, on or about March 9, 2004, John Viragh (“Consumer Viragh”) hired Respondent to perform exterior and interior renovations to his home which included

the installation of a handicap accessible half bath, an attached enclosed porch extension and an exterior handicap ramp.

10. The renovations to be performed by Respondent were memorialized in two (2) written contracts.

11. The first contract, dated March 9, 2004 ("Contract #1"), provided that Respondent would construct a handicap accessible half bath at a cost of \$4,500.00.

12. The second contract, which was undated ("Contract #2"), among other things, provided that Respondent would construct an attached enclosed porch extension and a handicap ramp at a cost of \$7,000.00.

13. Upon information and belief, Consumer Viragh made payments to Respondent totaling \$8,900.00 for the work to be performed pursuant to Contract #1 and Contract #2.

14. Upon information and belief, Respondent commenced the renovations to Consumer Viragh's home in approximately March 2004.

15. Upon information and belief, Respondent did not obtain the requisite permits to construct the handicap ramp and enclosed porch extension until September and December of 2004.

16. Upon information and belief, the Township of Florence Construction Code Office inspected the handicap ramp and enclosed porch extension installed by Respondent on at least nine (9) occasions from September 22, 2004 through January 25, 2005. Upon information and belief, the frame, foundation and electrical work failed inspection.

17. Upon information and belief, Respondent has failed to undertake the corrective action to ensure that the work passes inspection.

18. Upon information and belief, on or about June 15, 2004, Consumer Viragh advised Respondent of certain problems with the home improvement work performed, which included: (a) the failure to properly secure and paint the walls of the half bath; and (b) the failure to install rails on and secure the end of the handicap ramp.

19. Upon information and belief, Respondent failed to correct and/or complete the contracted for renovation work.

20. Upon information and belief, Consumer Viragh has hired other contractors to complete the renovation work.

COUNT I

VIOLATIONS OF THE CFA BY RESPONDENT (UNCONSCIONABLE COMMERCIAL PRACTICES)

21. Petitioner repeats and realleges the allegations contained in paragraphs 1 through 20 above as if more fully set forth herein.

22. The CFA, N.J.S.A. 56:8-2, prohibits:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing [] concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise....

23. In the operation of its home improvement business, Respondent has engaged in the use of unconscionable commercial practices, false promises, misrepresentations and/or the knowing concealment, suppression or omission of material facts.

24. Respondent has engaged in unconscionable commercial practices including, but not limited to:

- a. Performing electrical work in the State without being licensed to do so;
- b. Performing plumbing work in the State without being licensed to do so;
- c. Failing to hire a licensed electrician to complete all electrical work;
- d. Failing to hire a licensed plumber to complete all plumbing work;
- e. Commencing construction work prior to obtaining the requisite permits;
- f. Performing work in an unsafe and unsatisfactory manner so that it failed inspection;
- g. Failing to undertake the requisite corrective action to ensure that the construction work passed inspection;
- h. Failing to complete the work specified in the home improvement contract;
- i. Accepting payment for renovations that Respondent never completed;
- j. Failing to provide consumers with refunds for home improvement work that Respondent never completed; and
- k. Failing to respond to consumers' telephone calls and/or written correspondence in a timely fashion.

25. Each unconscionable commercial practice by Respondent constitutes a separate violation under the CFA, N.J.S.A. 56:8-2.

COUNT II

VIOLATIONS OF THE CFA BY RESPONDENT (KNOWING OMISSIONS OF MATERIAL FACT)

26. Petitioner repeats and realleges the allegations contained in paragraphs 1 through 25 above as if more fully set forth herein.

27. In the operation of its home improvement business, Respondent has engaged in knowing omissions of material fact including, but not limited to:

- a. Failing to inform consumers that Respondent is not a licensed electrician in the State;
- b. Failing to inform consumers that Respondent is not a licensed plumber in the State;
- c. Failing to include in home improvement contracts the date or time period within which work will commence; and
- d. Failing to include in home improvement contracts a complete and accurate description of the products and materials to be used.

28. Each knowing omission of material fact by Respondent constitutes a separate violation under the CFA, N.J.S.A. 56:8-2.

COUNT III

VIOLATIONS OF THE CFA BY RESPONDENT (FALSE PROMISES AND MISREPRESENTATIONS)

29. Petitioner repeats and realleges the allegations contained in paragraphs 1 through 28 above as if more fully set forth herein.

30. In the operation of its home improvement business, Respondent has made false promises and/or misrepresentations including, but not limited to, the following:

- a. Misrepresenting that Respondent is licensed to perform electrical work in the State;
- b. Misrepresenting that Respondent is licensed to perform plumbing work in the State;
- c. Misrepresenting that Respondent will correct all deficiencies in the home improvement work noted by the consumer; and
- d. Misrepresenting that Respondent will undertake all corrective action to ensure that the home improvement work passed the requisite inspections.

31. Each false promise and misrepresentation by Respondent constitutes a separate violation under the CFA, N.J.S.A. 56:8-2.

COUNT IV

VIOLATIONS OF THE HOME IMPROVEMENT PRACTICES REGULATIONS BY RESPONDENT

32. Petitioner repeats and realleges the allegations contained in paragraphs 1 through 31 above as if more fully set forth herein.

33. The Regulations Governing Home Improvement Practices, N.J.A.C. 13:45A-16.1 et seq. ("Home Improvement Regulations"), promulgated pursuant to the CFA, among other things, prohibit certain acts and practices of a seller in connection with the sale, advertisement or performance of home improvement contracts.

34. Respondent is a "seller" within the definition of N.J.A.C. 13:45A-16.1.

35. At all relevant times, Respondent entered into "home improvement contract[s]" within the definition of N.J.A.C. 13:45A-16.1.

36. The Home Improvement Regulations prohibit certain practices with regard to the performance of home improvement contracts, as follows:

- a. Without limiting any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq., utilization of a seller of the following acts and practices involving the sale, attempted sale, advertisement or performance of home improvements shall be unlawful hereunder:

....

7. Performance:

....

- ii. Fail to begin or complete work on the date or within the time period specified in the home improvement contract, or as otherwise represented, unless the delay is for reason of labor

stoppage; unavailability of supplies or materials, unavoidable casualties, or any other cause beyond seller's control. Any changes in the dates or time periods stated in a written contract shall be agreed to in writing; or

- iii. Fail to give timely written notice to the buyer of reasons beyond the seller's control for any delay in performance, and when the work will begin or be completed.

[N.J.A.C. 13:45A-16.2(a)(7).]

- 37. In addition, the Home Improvement Regulations deem it an unlawful practice for the seller to:

Request the buyer to sign a certificate of completion, or make final payment on the contract before the home improvement is completed in accordance with the terms of the contract. . . .

[N.J.A.C. 13:45a-16.2(a)(6)(v).]

- 38. Moreover, the Home Improvement Regulations include a writing requirement for contracts priced in excess of \$200.00 and provide, in pertinent part:

- 12. Home improvement contract requirements - writing requirement: All home improvement contracts for a purchase price in excess of \$200.00, and all changes in the terms and conditions thereof shall be in writing. Home improvement contracts which are required by this subsection to be in writing, and all changes in the terms and conditions thereof, shall be signed by all parties thereto, and shall clearly and accurately set forth in legible form all terms and conditions of the contract, including, but not limited to, the following:

....

- ii. A description of the work to be done and the principal products and materials to be used or installed in performance of the contract. The description shall include, where applicable, the name, make, size, capacity, model, and model year of principal products or fixtures to be installed, and the type, grade, quality, size or quantity of principal building or construction material to be used.

....

- iv. The dates or time period on or within which the work is to begin and be completed by the seller;

.....

- vi. A statement of any guarantee or warranty with respect to any products, materials, labor or services made by the seller.

[N.J.A.C. 13:45A-16.2(a)(12)(ii), (iv), (vi).]

39. Respondent violated the Home Improvement Regulations by engaging in certain conduct including, but not limited to:

- a. Failing to complete the work by the date or within the time period specified in the home improvement contract;
- b. Failing to provide consumers with timely notice of a delay in the commencement or completion of home improvement work as well as when the work will commence;
- c. Failing to include all changes in the terms and conditions of the home improvement contract in writing;
- d. Requiring consumers to make final payment on home improvement contracts before the work is completed in accordance with the terms of the contracts;
- e. Failing to include in home improvement contracts the dates or time periods or on within which the work is to commence;
- f. Failing to include in home improvement contracts a clear, accurate and legible statement of all terms and conditions;
- g. Failing to include in home improvement contracts a description of the work to be performed and the principal products and materials to be used or installed; and
- h. Failing to include in home improvement contracts a statement of any guarantee or warranty concerning any products, materials, labor and/or services to be provided thereunder.

40. Respondent's conduct constitutes multiple violations of the Home Improvement Regulations, N.J.A.C. 13:45A-1.1 et seq., each of which constitutes a per se violation of the CFA, N.J.S.A. 56:8-1 et seq.

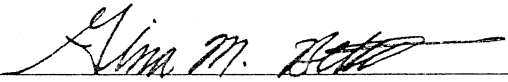
PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing allegations, Petitioner respectfully requests the entry of an Order after a hearing as authorized by the CFA, N.J.S.A. 56:8-3.1:

- (a) Finding that the acts and omissions of Respondent constitute multiple instances of unlawful practices in violation of the CFA, N.J.S.A. 56:8-1 et seq., and the Regulations promulgated thereunder, specifically the Home Improvement Regulations, N.J.A.C. 13:45A-16.1 et seq.;
- (b) Permanently enjoining Respondent and its owners, agents, managers, employees and representatives and all other persons or entities directly under its control, from engaging in, continuing to engage in, or doing any acts or practices in violation of the CFA, N.J.S.A. 56:8-1 et seq., and the Home Improvement Regulations, N.J.A.C. 13:45A-16.1 et seq., including, but not limited to, the acts and practices alleged in this Complaint;
- (c) Directing the assessment of restitution amounts against Respondent to restore to any affected person, whether or not named in this Complaint, any money or real or personal property acquired by means of any alleged practice herein to be unlawful and found to be unlawful, as authorized by the CFA, N.J.S.A. 56:8-8;
- (d) Assessing the maximum statutory civil penalties against Respondent for each and every violation of the CFA, in accordance with N.J.S.A. 56:8-13;
- (e) Directing the assessment of costs and fees, including attorney's fees, against Respondent for the use of the State of New Jersey, as authorized by the CFA, N.J.S.A. 56: 8-11 and N.J.S.A. 56:8-19; and

- (f) Granting such other relief as the interests of justice may require.

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Petitioner

By: 
Gina M. Betts
Deputy Attorney General

Dated: October 27, 2005
Newark, New Jersey